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DEPARTMENT OF COMMERCE

International Trade Administration

[A-520-803]

Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Initiation of Anti-Circumvention Inquiry on Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Polyplex USA LLC and Flex USA, Inc., (collectively Domestic Producers), the Department of Commerce (the Department) is initiating an anti-circumvention inquiry pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), to determine whether certain imports of polyethylene terephthalate film, sheet, and strip (PET Film) are circumventing the antidumping duty (AD) order on PET Film from the United Arab Emirates (UAE).¹

DATES: *Effective date:* [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4261.

¹ See Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates, 73 FR 66595 (November 10, 2008) (Order).

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2007, DuPont Teijin Films; Mitsubishi Polyester Film of America; SKC, Inc.; and Toray Plastics (America), Inc., (collectively Petitioners) filed a petition seeking the imposition of antidumping duties on imports of PET film from Brazil, the People's Republic of China (China), Thailand, and the UAE. Following the Department's affirmative finding of dumping and the U.S. International Trade Commission (ITC) finding of threat of injury, the Department issued AD orders on imports of the subject merchandise. In the first administrative review of the Order, Petitioners requested a review of JBF RAK LLC (JBF RAK), and JBF RAK also requested a review of itself. On December 23, 2009, the Department initiated an administrative review of JBF RAK.² The company has also been reviewed in each subsequent administrative review. JBF RAK's current cash deposit rate is 1.41 percent.³

On May 27, 2014, pursuant to section 781(b) of the Act and section 19 CFR 351.225(h), Domestic Producers submitted a request for the Department to initiate an anti-circumvention inquiry to determine whether JBF RAK is circumventing the Order on PET Film from the UAE by exporting to the United States products completed or assembled in its Bahrain facility, JBF Bahrain S.P.C. (JBF Bahrain), from inputs sourced from the subject countries India and the UAE.

Scope of the Order

The products covered by the order are all gauges of raw, pre-treated, or primed polyethylene terephthalate film, whether extruded or co-extruded. Excluded are metallized films

² See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 74 FR 68229, 68232 (December 23, 2009).

³ See Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 24401 (April 30, 2014).

and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. Polyethylene terephthalate film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Merchandise Subject to the Anti-Circumvention Proceeding

This anti-circumvention proceeding covers PET film exported or produced by JBF Bahrain. If, within sufficient time, the Department receives a supported allegation from an interested party regarding potential circumvention of the Order by other companies in Bahrain, we will consider conducting any additional inquiry concurrently with this inquiry.

Initiation of Anti-Circumvention Proceeding

Section 781(b)(1) of the Act provides that the Department may find circumvention of an AD order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting anti-circumvention inquiries, under section 781(b)(1) of the Act, the Department will also evaluate whether: (1) The process of assembly or completion in the other foreign country is minor or insignificant; (2) the value of the merchandise produced in the foreign country to which the AD order applies is a significant portion of the total value of the merchandise exported to the United States; and (3) action is appropriate to prevent evasion of such an order or finding. As discussed below, Domestic Producers provided evidence with respect to these criteria.

A. Merchandise of the Same Class or Kind

Domestic Producers claim that the merchandise exported to the United States by JBF Bahrain is the same class or kind as that covered by the Order in this proceeding.⁴ Domestic Producers contend that ITC data show that the merchandise from Bahrain enters the United States under the same tariff heading as subject merchandise, and that JBF Bahrain is the only producer of PET Film in Bahrain. Domestic Producers also presented evidence that JBF Bahrain is sourcing inputs from JBF RAK, and JBF RAK's parent company in India that are used in the production of subject merchandise.⁵

B. Completion of Merchandise in a Foreign Country

Domestic Producers note that the Act requires that "before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which. . . is produced in the foreign country with respect to which such order or finding applies. . ."⁶ Domestic Producers presented evidence that JBF sourced inputs from India and the UAE, which both have AD orders on PET Film.

C. Minor or Insignificant Process

Under section 781(b)(2) of the Act, the Department is required to consider five factors to determine whether the process of assembly or completion is minor or insignificant. Domestic Producers allege that the production of resins, which JBF Bahrain sourced from affiliates in India and the UAE, comprises the majority of the value associated with the subject merchandise, and that the processing of PET resins into PET Film, completed by JBF Bahrain, adds relatively little value.

⁴ See Domestic Producers' "Request for Anti-circumvention Inquiry" (Request) May 27, 2014, at 5.

⁵ Id., at 6.

⁶ See section 781(b)(1)(B) of the Act.

(1) Level of Investment

Domestic Producers submitted documentation that JBF Bahrain has a functioning line that produces PET film, and two additional lines planned to start production of PET film in the “near future,” with each of these lines having an estimated production of 30,000 metric tons per year.⁷ Domestic Producers claim that the level of investment is minimal compared to the volume of film that can be produced.

(2) Level of Research and Development

Domestic Producers are not aware of any research and development taking place in Bahrain, and note that production of PET film involves mature technologies and processes.⁸

(3) Nature of Production Process

According to Domestic Producers, the production process undertaken by JBF Bahrain involves the simple processing of resins sourced from its affiliates in India and the UAE.⁹

(4) Extent of Production in Bahrain

Domestic Producers argue that, when compared to the volume of film that can be produced, the investment in JBF Bahrain’s processing operation is not significant.¹⁰

(5) Value of Processing in Bahrain

Domestic Producers assert that producing PET resin accounts for more than 70 percent of the value added of PET film.¹¹ Domestic Producers estimate that that local content is unlikely to exceed 20 of the cost of merchandise.¹² As JBF Bahrain sources its PET resin from affiliates in

⁷ See Request, at 7

⁸ Id., at 8.

⁹ Id.

¹⁰ Id., at 9.

¹¹ Id., at 9 and Exhibit 7.

¹² Id.

India and the UAE, the processing performed by JBF Bahrain represents a small portion of the value of finished PET film.

D. Value of Merchandise Produced in India and the UAE

As Domestic Producers argued previously, the value of processing, at issue in Bahrain, is a minor part of the cost, unlikely to exceed 20 percent of cost.

E. Additional Factors To Consider in Determining Whether Action Is Necessary

Section 781(b)(3) of the Act directs the Department to consider additional factors in determining whether to include merchandise assembled or completed in a foreign country within the scope of the Order, such as: “(A) the pattern of trade, including sourcing patterns, (B) whether the manufacturer or exporter of the merchandise . . . is affiliated with the person who uses the merchandise . . . to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and (C) whether imports into the foreign country of the merchandise. . . have increased after the initiation of the investigation which resulted in the issuance of such order or finding.”

(1) Pattern of Trade

Domestic Producers note that at the time the petition was filed for the original investigation of PET Film from the UAE, Bahrain was not a source of U.S. PET Film imports.¹³ ITC data show that Bahrain first exported PET Film to the United States in December 2013, and that Bahrain has had exports of PET Film to the United States every month thereafter.¹⁴ During the same time period exports of PET film from the UAE declined.¹⁵ Domestic Producers further argue that there is no economic rationale for adding a new production facility in Bahrain, as there

¹³ Id., at 12.

¹⁴ Id., at 12 and Exhibit 10.

¹⁵ Id.

is no local market in Bahrain for the product, and the regional market is insignificant.¹⁶ To increase production, it would have been more efficient to add production lines to the JBF RAK facility in the UAE, rather than build a new facility in Bahrain.

(2) Affiliation

Domestic Producers note that JBF Bahrain, JBF India, and JBF RAK, are indisputably affiliated, as shown by the JBF Group website.¹⁷ Domestic Producers further argue that it is “clear that JBF Bahrain is merely taking PET resins produced by its affiliates and performing the same operations using these resins that the affiliate was doing in the UAE.”¹⁸

(3) Increase of Subject Imports from UAE to Bahrain After Investigation Initiation

While unable to access comprehensive import data of the PET Film inputs, bright and silica resin chips, into Bahrain for the period between initiation of the investigation until the present, Domestic Producers believe there were no such imports entered previously, as there were no production facilities producing PET film in Bahrain at this time.¹⁹ Domestic Producers presented evidence of shipments of silica resin chips from JBF India to JBF Bahrain which coincide with the start-up of the JBF Bahrain PET Film plant, and that JBF Bahrain is sourcing PET resin from JBF RAK.²⁰

Analysis of the Request

Based on our analysis of Petitioner’s anti-circumvention inquiry request, the Department determines that Domestic Producers satisfied the criteria under section 781(b)(1) of the Act to warrant an initiation of an anti-circumvention inquiry. In accordance with 19 CFR 351.225(e), the Department finds that the issue of whether a product is included within the scope of an order

¹⁶ Id., at 13.

¹⁷ Id., at 13 and Exhibit 2.

¹⁸ Id., at 13.

¹⁹ Id., at 14, Exhibit 3.

²⁰ Id., at 14, Exhibit 4.

cannot be determined based solely upon the application and the descriptions of the merchandise. Accordingly, the Department will notify by mail all parties on the Department's scope service list of the initiation of an anti-circumvention inquiry. In addition, in accordance with 19 CFR 351.225(f)(1)(i) and (ii), a notice of the initiation of an anti-circumvention inquiry issued under 19 CFR 351.225(e) includes a description of the product that is the subject of the anti-circumvention inquiry, PET Film that contains the characteristics as provided in the scope of the Order, and an explanation of the reasons for the Department's decision to initiate an anti-circumvention inquiry, as provided below.

With regard to whether the merchandise from the Bahrain is of the same class or kind as the merchandise produced in the UAE, Domestic Producers presented information to the Department indicating that, pursuant to section 781(b)(1)(A) of the Act, the merchandise being produced in and/or exported from Bahrain by JBF Bahrain may be of the same class or kind as PET Film produced in the UAE, which is subject to the Order.²¹ Consequently, the Department finds that Domestic Producers provided sufficient information in its request regarding the class or kind of merchandise to support the initiation of an anti-circumvention inquiry.

With regard to completion or assembly of merchandise in a foreign country, pursuant to section 781(b)(1)(B) of the Act, Domestic Producers also presented information to the Department indicating that the PET Film exported from Bahrain to the United States are produced by JBF Bahrain in Bahrain using key components from the UAE that account for a significant portion of the total costs related to the production of PET Film. We find that the information presented by Domestic Producers regarding this criterion supports its request to initiate an anti-circumvention inquiry.

²¹ Id., at 5 and Exhibit 10.

The Department finds that Domestic Producers sufficiently addressed the factors described in section 781(b)(1)(C) and 781(b)(2) of the Act regarding whether the assembly or completion of PET Film in Bahrain is minor or insignificant. In particular, Domestic Producers' submission asserts that: (1) The level of investment is minimal when compared with the volume of film that can be produced; (2) there is no evidence of research and development taking place in Bahrain; (3) the production processes undertaken by JBF Bahrain involve the simple processing of resins in countries subject to the Order; (4) the investment in JBF Bahrain's processing operations is not significant in the context of production capacity; and (5) the value of the processing performed in Bahrain is minimal, as the production of PET resin outside Bahrain accounts for over 70 percent of the value of finished PET Film.²²

With respect to the value of the merchandise produced in the UAE, pursuant to section 781(b)(1)(D) of the Act, Domestic Producers relied on published sources, a simulated cost structure for producing PET Film in Bahrain, and arguments in the “minor or insignificant process” portion of its anti-circumvention request to indicate that the value of the key components produced in the UAE may be significant relative to the total value of the PET Film exported to the United States.²³ We find that this information adequately meets the requirements of this factor, as discussed above, for the purposes of initiating an anti-circumvention inquiry.

Finally, with respect to the additional factors listed under section 781(b)(3) of the Act, we find that Domestic Producers presented evidence indicating that imports of PET Film from Bahrain to the U.S. increased since the imposition of the Order and that imports of bright resin

²² See discussion of these five factors above.

²³ See “Request” at 7, 9 and Exhibit 7.

chips from the UAE to Bahrain also increased since the Order took effect, further supporting initiation of this anti-circumvention inquiry.²⁴

In accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties on the merchandise. The Department will establish a schedule for questionnaires and comments on the issues. In accordance with section 781(f) of the Act and 19 CFR 351.225(f)(5), the Department intends to issue its final determination within 300 days of the date of publication of this initiation. This notice is published in accordance with 19 CFR 351.225(f).

Christian Marsh,
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations.

July 18, 2014
Date

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²⁴ Id., at 12 and Exhibit 10.